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FOREWORD

ROBERT J. NORDSTROM*

In the spring of 1958 the OHIO STATE LAW JOURNAL published a symposium on the subject of damages in personal injury litigation. Within a few weeks this issue was a complete "sell out". Its contents are now being cited by state and federal courts. It has been referred to in texts and in other law reviews. Most of its articles were reprinted in other journals—some more than once. Its ideas formed the basis of a short course for practicing lawyers and over 500 attorneys attended these sessions at the College of Law, Ohio State University.

These facts are cited merely to indicate how great is the lawyer's need for an understanding of the law of damages. This need has its roots in the lack of formal law school training, for personal injury damages are all but ignored in most curricula. Other remedies (except those of equitable origin) have met the same fate. The need is, however, much deeper. Even if we had adequate law school courses, continuing scholarly research must be combined with a lot of practical "know how" to keep the personal injury lawyer abreast of the subject of damages. New ideas are emerging as doctors understand more and more of the medical cause-and-effect cycle. New methods of proof are under experimentation before both the judge and the jury. Old rules of the law of damages are being scrutinized by appellate courts across the country. Some of these rules are being discarded or reshaped. Others are being affirmed and extended to new problems. Thus, there will be, throughout the next decade or more, a constant need for appraisal and reappraisal of these rules of personal injury damages.

There must, however, be more than an appraisal. Both the bench and bar must work together to make judicial sense out of this area of law. The old, unworkable rules must be discarded in favor of those

* Associate Dean and Professor of Law, The Ohio State University.

ideas that give just compensation for injuries caused by defendant's fault. The real problem lies in getting the bar to work together toward solutions that meet notions of justice and fairness. Personal injury cases have divided a large portion of the members of our profession into two camps. One flies the banner of the "more adequate verdict"; the other rallies under the flag of the "less adequate verdict". The public follows either one group or the other, depending upon whether it is then a plaintiff or a defendant. Publicity of the size of the verdicts only widens the distance between the two camps—each with its own associations, disciples, and publications. In this struggle, many members of the bar have lost sight of their obligation to the court and to justice, which can inaptly be phrased here as simply "the adequate verdict".

A determination of what amounts to "adequate" requires a careful analysis of the legal theory underlying personal injury damages. It also necessitates a close scrutiny of the methods by which these damages should be proved. Unless attorneys for both plaintiffs and defendants realize this, unless we make this area of law a part of a profession and not a game to be played before a jury, and unless we work together as lawyers to solve mutual problems—not separately as two opposing champions, the public will find another method of having personal injury claims (at least the automobile cases) handled. Already there is a clamor for compulsory insurance or for automobile compensation statutes patterned after workmen's compensation acts. If an administrative agency is created to process these claims, the probabilities are high that laymen will be allowed to represent both parties. This we should guard against, not just selfishly, but also because lawyers have been trained to be sensitive to the meaning of justice and client responsibility. These problems of personal injury damages deserve *professional* attention by a group dedicated to serving the public interest.

It is toward this kind of an understanding of the law of damages that this symposium was planned. It takes its place beside the one printed two years ago—except this one emphasizes the more practical problems involved in the proof of personal injury damages. It begins with the role that pre-trial plays in "evaluating" a case; it moves through such timely topics as medical evidence, demonstrative evidence, hospital records, how to prove reduction to present worth, punitive damages; and it concludes with a consideration of the collateral source rule. These two symposia (this issue and the one printed in the spring of 1958) give the lawyer a chance to study damages just as he has studied problems of liability.

Liability and damages are, of course, many times inseparable.

In proving a tort claim or a defense to a tort claim, damages are often left as a by-product of the evidence introduced to show or to negate liability. This is most graphically demonstrated in the testimony given by the attending physician or the eye witness to the injury. Too often lawyers are content with letting damages (or the lack thereof) rest solely on such "by-product" testimony. Too often good cases or sound defenses are lost by this summary and somewhat cavalier treatment of damages. The trial lawyer must understand the theory and proof of damages just as he understands the rules of tort liability if he is to serve both his client and justice. I believe that this issue of the OHIO STATE LAW JOURNAL will contribute to an understanding of this double role of the trial lawyer.